

REMARKS

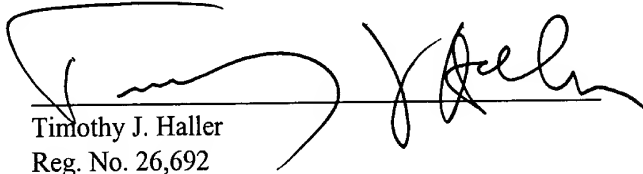
Attached Form 1449 includes a copy of patentee's Petition for Rehearing which was filed with the United States Court of Appeals for the Federal Circuit on February 22, 2001. The Petition is directed to the Federal Circuit's February 8, 2001 decision on appeal (included in the Petition for Rehearing) which in pertinent part affirmed the U.S. District Court for the Eastern District of Michigan summary judgment decision of invalidity on obviousness grounds of claims 5 and 6 of U.S. Patent No. 5,661,645 on which this reissue is sought, wherein claims 5 and 6 considered by the district court are identical to the allowed claims 5 and 6 in this application (as amended to be in independent form). As set forth in the Petition for Rehearing, patentee seeks to clarify whether the Federal Circuit's February 8, 2001 decision precludes patentee from bringing a motion to reopen the summary judgment decision in the district court to determine non-obviousness of claims 5 and 6 in light of the allowance of claims 5 and 6 in the reissue proceedings.

To date there has been no decision on the Petition for Rehearing. Accordingly, on February 23, 2001, patentee filed a continuation application (with respect to this reissue application) by Express Mail (no serial number for the continuation application has been received to date). It is patentee's intention that the present application, pursuant to the Request for Continued Examination, continue to issue without claims 5 and 6. In so doing all remaining claims then issuing in this Request for Continued Examination application will be canceled out of the continuation application whereby the pendency of claims 5 and 6 can be maintained in the continuation application pending a clarification of their status before the Federal Circuit and potential further proceedings thereon before the district court.

Necessarily the Federal Circuit's February 8, 2001 decision on claims 5 and 6 was not known until after the payment of the Issue Fee herein on February 5, 2001 whereby the present amendment became necessary and was not earlier presented. A further Supplemental Declaration for Reissue Patent Application dated February 28, 2001 is attached to the extent it is required.

In summary, it is requested that claims 5 and 6 be canceled with the remainder of the previously allowed claims being passed to issue. It is patentee's understanding that the Base Issue Fee already paid for the original reissue application may be applied to a Notice of Allowance and Issue Fee Due resulting from the Request for Continued Examination application. Such allowance of this application is respectfully solicited.

Respectfully submitted,


Timothy J. Haller
Reg. No. 26,692

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Niro, Scavone, Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602
(312) 236-0733